IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 321 of 2005.

Reserved on: 4.05.2007.

Decided on: 24.05. 2007.

The Executive Engineer, IPH Division, Palampur, Distt. Kangra (HP).

… … … Petitioner.

Versus

Machlu Ram.

… … … Respondent.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the petitioner:	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan, and Ms. Meenakshi Sharma, Deputy Advocate Generals.**
For the Respondents:	**Mr. Rahul Mahajan, Advocate.**

Rajiv Sharma, Judge:

This petition is filed against the award date 5.11.2004 passed by the Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala, H.P.

Whether reporters of local papers may be allowed to see the judgment? No.

The brief facts necessary for adjudication of this petition are that the Labour Commissioner has made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala on 24th August, 2001:-

> **"Whether the plea of the Executive Engineer, I&PH, Division, Palampur that Shri Machlu Ram son of Shri Darbari workman had left the job of his own accord w.e.f. 1-1-1995 is legal and justified? If not, to what seniority, service benefits and relief Shri Machlu Ram son of Shri Darbari workman is entitled to ?"**

The respondent (hereinafter referred to as the workman for convenience) as a sequel to the reference, filed statement of claim before the Labour Court-cum-Industrial Tribunal. The case set out by the workman in the claim petition was that he has been appointed by the department in the year 1992 and he was terminated w.e.f. 1.1.1995 though he had completed more than 240 days in each preceding 12 calendar months. The workman had also pleaded in his claim petition that many junior workmen, namely, Suresh Kumar, Ramesh Kumar, Punnu Ram, Ashok Kumar, Raghu Ram and Tilak Ram were retained by the department while retrenching him on 1.1.1995. The Executive Engineer, Irrigation and Public Health Division, Palampur had filed reply to the claim petition stating therein that the workman was initially engaged w.e.f. 16.3.1994 as a daily rated beldar on muster roll basis and worked as such till 31.12.1994 and thereafter he left the job voluntarily. The man-days chart of the workman was also placed on record as Annexure R-1. The other contention raised in

the reply filed by the department was that the workman was disengaged in the year 1995, but reference has been made in the year 2001. The learned Labour Court-cum-Industrial Tribunal has answered the award on 5.11.2004 and has declared the retrenchment of the workman illegal w.e.f. 1.1.1995. The workman has also been held entitled to his seniority and all consequential benefits w.e.f. 1.1.1995.

Mr. Advocate General has strenuously urged before this Court that it was a case of abandonment and the findings recorded by the Labour Court-cum-Industrial Tribunal being contrary are not sustainable. Mr. Rahul Mahajan appearing on behalf of the workman has supported the award dated 5.11.2004.

The Labour Court on the basis of material placed on record and after taking into consideration the statement of G.D. Bhardwaj, RW-1 has come to the conclusion that the workman had completed more than 240 days w.e.f. 16.3.1994 to 31.12.1994. Admittedly, no notice was issued to the workman before retrenching him w.e.f. 1.1.1995. The workman was entitled to get the benefits accruing under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) in case of his retrenchment. The State has not placed any material on record to support its plea before the Labour Court-cum-Industrial Tribunal that it was not a case of retrenchment but of abandonment. Abandonment is based on fact and the State was required to prove it in accordance with law. Thus, the finding recorded by the Labour Court that the department

has failed to prove that the workman has abandoned his job voluntarily is correct and needs no interference.

The learned Labour Court has also correctly came to the conclusion on the basis of material placed before it that the workmen junior to the respondent were retained at the time of the retrenchment, i.e. w.e.f. 1.1.1995. To support this version, the workman has appeared as PW-1 and stated that the workmen junior to him were retained. RW-1 Shri G.D. Bhardwaj has also admitted in cross-examination that persons, namely, Suresh Kumar, Ramesh Chand, Ashok Kumar were still working with the respondent. In view of this, there was violation of Section 25-G of the Act. In these circumstances the principle of last come first go was to be applied.

The up-shot of the above discussion is that the finding recorded by the learned Labour Court-cum-Industrial Tribunal with regard to violation of Section 25-F as well as 25-G of the Act are up-held. Though the findings of the Labour Court as stated above, are up-held, but the Labour Court could not grant all the consequential benefits w.e.f. 1.1.1995 since the workman was retrenched on 1.1.1995 and the reference was made on 24th August, 2001 after a period of six years. The workman has also not placed on record any material to show that he was not gainfully employed w.e.f. 1.1.1995 to 5.11.2004.

Consequently, the award is modified to the extent that the workman will be entitled to re-engagement with seniority, but he will be entitled to back wages only from 13th September, 2005 till

his date of re-engagement. This petition is disposed of accordingly with no order as to costs.

May 24, 2007 **(Rajiv Sharma)**
(sck). **Judge**